

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Shawn A. P. Smith, Daniel P. Karipides		
Assignee:	Versata Development Group, Inc.		
Title:	Session-Based Processing Method And System		
Serial No.:	10/796,317	Filed:	March 9, 2004
Examiner:	Shyue Jiunn Hwa	Group Art Unit:	2163
Docket No.:	T00107	Customer No.:	33438

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Austin, Texas
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PRE-APPEAL BRIEF REQUEST FOR REVIEW AND STATEMENT OF REASONS

Sir:

Applicants request review of the Final Office Action in this application. No amendments are being filed with the request. This request is being filed with a Notice of Appeal. The following sets forth a succinct, concise, and focused set of arguments for which the review is being requested.

CLAIM STATUS

In the Final Office Action, claims 8-10 were rejected under 35 U.S.C. § 101; claims 1, 2, and 4 were rejected as anticipated by U.S. Patent Publication No. 2003/0061541 to Kaler et al.; claims 3, 5-8, 11, and 14-18 were rejected as obvious over Kaler and U.S. Patent No. 6,826,697 to Moran; claims 9 and 12 were rejected as obvious over Kaler, Moran, and U.S. Patent Publication No. 20020099806 to Balsamo et al.; and claims 10, 13, 19, and 20 were rejected as obvious over Kaler, Moran and U.S. Patent No. 6,965,634 to Clark ("Clark"). For the reasons set forth below, Applicants respectfully traverse the rejections.

A. Claims 8-10 Recite Statutory Subject Matter

In rejecting claims 8-10 under 35 U.S.C. § 101, the Examiner asserted that "the language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practice (sic, practical) application producing a concrete, useful, and tangible result" and rejects the claims as being "drawn to a form of signal" or "form of energy." *See, Final Office Action*, p. 4. In support of this rejection, the Examiner referred to Applicants' description at page 5, paragraph 23 of the application as showing that a "medium" that includes a "signal" or "carrier wave," and concludes therefrom that "the claims fail to place the invention squarely within one statutory class of invention." In response, Applicants respectfully submit that they are not able to locate any reference in paragraph 23 to a "medium" that

includes a “signal” or “carrier wave” as asserted by the Examiner. Applicants requested that the Examiner identify the specific passage in paragraph 23 that describes Applicants’ supposed intent concerning the meaning of the term “medium,” but in response, the Examiner cited to Applicants’ description of what an “algorithm” is. Advisory Action (Oct. 9, 2008).

Regarding the statutory subject matter rejection, when discussing patentable subject matter for computer-related inventions, the MPEP states that:

The claimed invention as a whole must accomplish a practical result. . . . The purpose of this requirement is to limit patent protection to inventions that possess a certain level of “real world” value, as opposed to subject matter that represents nothing more than an idea or concepts, or is simply a starting point for future investigation or research. . . Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful.

See, MPEP § 2106A (citations omitted). Additionally, the Federal Circuit has addressed the issue of whether computer software is patentable subject matter in a number of decisions. For example, the Federal Circuit in In re Alappat set forth the view that certain types of mathematical subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, and thus that subject matter is not, in and of itself, entitled to patent protection. For determining whether a claim is statutory subject matter, the focus must be on the claim as a whole. It is not necessary to determine whether a claim contains, as merely a part of the whole, any mathematical subject matter that standing alone would not be entitled to patent protection. In In re Alappat, the four claimed means elements functioned to transform one set of data to another through what may be viewed as a series of mathematical calculations. But that alone does not justify a holding that the claim as a whole is directed to non-statutory subject matter. The claim is not so abstract and sweeping that it would wholly preempt the use of any apparatus employing the combination of mathematical calculations recited therein. In re Alappat, 33 F.3d 1526, 31 USPQ2d 1545 (Fed. Cir. 1994). The Federal Circuit also addressed the issue of patentable subject matter in State Street Bank & Trust Co. V. Signature Fin Group Inc. (State Street). In State Street, the Federal Circuit sets forth:

Today we hold that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces a ‘a useful, concrete and tangible result’-a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to -process, machine, manufacture, or composition of matter-but rather on the essential characteristics of the subject matter, in particular, its practical utility. Section 101 specifies that statutory subject matter must also satisfy the other ‘conditions and requirements’ of Title 35, including novelty, nonobviousness, and adequacy of disclosure and notice. See In re Warmerdam, 33 F.3d 1354, 1359, 31 USPQ2d 1754, 1757-58 (Fed. Cir. 1994). For purpose of our analysis, as noted above,

claim 1 is directed to a machine programmed with the Hub and Spoke software and admittedly produces a ‘useful, concrete, and tangible result.’ Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557. This renders it statutory subject matter, even if the useful result is expressed in numbers, such as price, profit, percentage, cost, or loss.

State Street Bank & Trust Co. V. Signature Fin Group Inc., 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998). Finally, the Federal Circuit has addressed the issue of whether software embodied on a computer readable media is statutory subject matter in In re Beauregard. The issue in In re Beauregard related to a Board rejection of computer program product claims on the grounds of a printer matter objection. During the pendency of the appeal, the PTO commissioner issued an order that computer programs embodied in a tangible medium are patentable subject matter. Based upon the PTO commissioner’s order, the Federal circuit vacated and remanded the appeal. (See e.g., In re Beauregard, 53 F. 3d 1583, 35 USPQ2d 1383 (Fed. Cir. 1995). Where, as here, the claim recites a processing device and a recordable medium having stored instructions and data which are executed to perform the claim requirements, the claim recites statutory subject matter.

B. Claims 1-20 Are Not Anticipated or Obvious

In response to the various rejections of claims 1-20 as being anticipated or obvious over Kaler, alone or in combination with Moran, Balsamo, and/or Clark, Applicants respectfully request reconsideration and withdrawal of the rejections because the cited art fails to disclose Applicants’ session-based scheme for grouping and processing log file entries using a memory window to select a subset of the log file records for identifying complete session records that may be analyzed or parsed, and for otherwise identifying incomplete session records for subsequent processing.

In particular, claims 1-7 recite a method for “grouping log file entries by session” wherein log file entries in memory are each processed “to identify entries in the subset of log file entries that belong to a complete client session,” thereby allowing “grouping [of] entries in the subset that belong to a complete client session.” Claim 1 (emphasis added). In rejecting the claims, the Examiner cites Kaler, paragraphs 139, 246, 27, 283, 232, 19, 172 and 188. See, Office Action, pp. 7-8. With all due respect, Applicants have carefully reviewed the cited passages, but there is no disclosure or suggestion of the claim requirements for grouping log files by session. While the word “session” appears in the Kaler description, there is no teaching or suggestion of *grouping log file entries by session by identifying entries in a subset of logfile entries that belong to complete session*, nor of *grouping entries in the subset that belong to a complete session*. To assert otherwise is an exercise in imagination. As for the Examiner’s reliance on Kaler’s disclosure at page 1, paragraph 9 (regarding the application modifications made by the prior art developer) (Advisory Action, Continuation Sheet), this reliance is misplaced since Kaler describes this prior art approach as having “several serious deficiencies” (Kaler, paragraphs 10-17), and then proceeds to describe an automated tool for analyzing the performance of a

data processing system, effectively *teaching away* from the claimed invention. Accordingly, Applicants submit that a *prima facie* case of anticipation or obviousness has not been established for claims 1-7.

In similar fashion, the cited art fails to teach or suggest the requirements in claims 8-10 of an computer software which “allocate[s], for each identified user session, an index to identify all records in the ring buffer that are associated with the identified user session and to identify all start or end records” and then “process[es] the index to group all records in the ring buffer belonging to a complete user session, to output the grouped records for further analysis.” Claim 8 (emphasis added). After admitting that these requirements from claim 8 are missing from Kaler, the Examiner cites selected passages from Moran to meet the claim requirements. *See, Final Office Action*, pp. 14-15. With all due respect, Applicants have carefully reviewed the cited Moran passages, but there is no disclosure or suggestion of the claim requirements for grouping records in the ring buffer belonging to a complete user session. While Moran refers to a “session identifier,” there is no teaching or suggestion of allocating indexes for each identified user session to identify all records in the ring buffer that are associated with the identified user session, nor of processing the indexes to group all records in the ring buffer belonging to a complete user session. Accordingly, Applicants submit that a *prima facie* case of obviousness has not been established for claims 8-10.

As for claims 11-17, the cited art fails to teach or suggest the requirements of a system for session-based processing of log files which includes “a processing engine to process a subset of the plurality of server request entries to group the server request entries by session using the session identifier in each server request entry.” Claim 11 (emphasis added). After admitting that these requirements from claim 11 are missing from Kaler, the Examiner cites selected passages from Moran to meet the claim requirements. *See, Final Office Action*, pp. 16-17. Based on Applicants’ review of the cited passages, there is no disclosure or suggestion of the claim requirements for session-based processing of log files. Again, Moran’s reference to a “session identifier” does not amount to a teaching or suggestion of a system for session-based processing of log files which includes a processing engine to process a subset of the plurality of server request entries to group the server request entries by session using the session identifier in each server request entry. As for the Examiner’s reliance on Kaler’s disclosure at page 1, paragraph 8 (regarding the prior art developer’s preparation of a server component that prepares credit checks) (*Advisory Action*, Continuation Sheet), this reliance is misplaced since Kaler describes this prior art approach as having “several serious deficiencies” (Kaler, paragraphs 10-17), and then proceeds to describe an automated tool for analyzing the performance of a data processing system, effectively *teaching away* from the claimed invention. Accordingly, Applicants submit that a *prima facie* case of obviousness has not been established for claims 11-17.

Finally, the cited art fails to teach or suggest the requirements in claims 18-20 of “system for parsing web site logs one session at a time” by processing a subset of network session data “to group said network session data by session” and “generating a first output file containing network session data grouped by session.” Claim 18 (emphasis added). In rejecting these claims, the Examiner cites Kaler, paragraph 246 to meet the “means for processing...” element and Kaler, page 16 (top left, C interface codes) to meet the “means for generating...” element. *See, Office Action*, pp. 20-21. With all due respect, Applicants submit that the cited passages nowhere disclose or suggest the claim requirements for parsing log files by session. In particular, neither Kaler, ¶246 (which describes an interface API “that enables the operating system to read any one or more of several fields in the application. These fields include arguments, causality i.d., correlation i.d., dynamic event data, exception, return value, security i.d., source component, source handle, source machine, source process, source process name, source session, source thread, target component, target handle, target machine, target process, target process name, target session, and target thread.”), nor the “APIs for Generating Events (C Interface)” at page 16, teach or suggest of a system for parsing web site logs one session at a time by using a means for processing a subset of network session data to group said network session data by session and a means for generating a first output file containing network session data grouped by session. Accordingly, Applicants submit that a *prima facie* case of obviousness has not been established for claims 18-20.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejection of the pending claims should be removed and these claims should be allowed. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned at (512) 338-9100.

CERTIFICATE OF TRANSMISSION

I hereby certify that on October 27, 2008 this correspondence is being transmitted via the U.S. Patent & Trademark Office's electronic filing system.

/Michael Rocco Cannatti/

Respectfully submitted,

/Michael Rocco Cannatti/

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